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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,394	01/04/2005	Ezat Khoshdel	J3678(C)	5147
201 7590 12/10/2009 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
FOLEY, SHANON A				
ART UNIT		PAPER NUMBER		
1619				
NOTIFICATION DATE		DELIVERY MODE		
12/10/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary

Application No.

10/520,394

Applicant(s)

KHOSHDEL ET AL.

Examiner

SHANON A. FOLEY

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,9,10,12,16,17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,9,10,12,16,17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

As a note, instant claim 19 is designated as “cancelled”, but is clearly amended and intended to be of record for consideration, as evidenced by the “Remarks” section of the amendment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-6, 9, 10, 12, 16, 17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barton et al. (WO 96/10387) and Moeller et al. (US 4,833,147) for reasons of record.

Applicant points to page 24 and argues that the xanthine component and the alpha hydroxy acid component have been found to synergistically improve high humidity style retention.

The data provided on page 24 and applicant’s arguments have been fully considered, but are found unpersuasive. Half of the styling compositions compared in the working example comprise either 5% caffeine or 5% citric acid (emphasis added). In contrast, the instant claims require both ingredients (emphasis added).

The data regarding curl drop values on page 24 is summarized below:

<u>Caffeine</u>	<u>Citric acid</u>	<u>Caffeine and Citric acid</u>
45.8%	37.5%	35%
48%	49%	
<u>Deviation value:</u>	2.2%	11.5%

The combined effect of caffeine and citric acid does not equal a substantially reduced level, or even additive level of curl drop since the deviation between each ingredient of caffeine or citric acid separately, ranges between 2.2% to 11.5%, respectively. There is no evidence of additive effect, much less synergistic, when caffeine and citric acid are combined.

Applicant argues that there is nothing in Barton et al. or Moeller et al. that discloses or suggests the use of a substituted xanthine in combination with an alpha-hydroxy acid.

Applicant's arguments have been fully considered, but are found unpersuasive. If Barton et al. or Moeller et al., separately taught all of the limitations instantly required, either reference teaching all of the required limitations would have been applied under the anticipatory statute. However, since the teachings of Moeller et al. remedy the deficiencies of Barton et al. and provide motivation for modifying the teachings of Barton et al. with a reasonable expectation of success, the claims are properly rejected under prima facie obviousness.

Applicant further argues that neither Barton et al. nor Moeller et al. discuss "hair lengthening" or reduction in frizziness. Applicant further explains what is intended by this phrase and how it is measured.

In response, while neither Barton et al. nor Moeller et al. specifically discuss lengthening properties of the treated hair, it is determined that the instantly required ingredients and the method steps are rendered prima facie obvious from the combined teachings of Barton et al. and Moeller et al. Therefore, the intended results accomplished by the combined teachings of Barton et al. and Moeller et al. would have been inherently produced.

Applicant argues that Example 3.2 of Moeller et al. fails to teach the required contents of xanthine and alpha-hydroxy acid ranging between 2 to 5wt%. Applicant states that the components in the example are outside the claimed ratio recited in claims 1, 17 and 19.

Applicant's arguments and a review of Moeller et al. have been fully considered, but are found unpersuasive. Barton et al. explicitly state that all of the ingredients listed in the formulation (including xanthine and citric acid) are present in quantities ranging from 0.1 to 5%, see page 3, lines 23-24 and 27. Therefore, the quantities of components instantly required are taught, or at least suggested, by Barton et al. Manipulation of relative amounts of formulation components results in differences in concentration, will not support the patentability of subject matter encompassed by the prior art, unless there is evidence indicating that such concentration data are critical. "[W]here the general conditions of a claim are disclosed in prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Since workable ranges of ingredients are taught by Barton et al., the instant ranges claimed would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made. No unexpected results have been demonstrated with combination of quantities required by the instant invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on flex, generally M-F 7AM - 3 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne L. Eyler can be reached on (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/
Primary Examiner
Art Unit 1619